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# Supreme Court of the United States

OCTOBER TERM, 1956

## No. 1055

**ALLEN D. TURNER, Petitioner**

**v.**

**UNITED STATES OF AMERICA**

**Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

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## Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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TO THE SUPREME COURT OF THE UNITED STATES:

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit affirming the judgment of conviction of petitioner by the United States District Court for the Southern District of New York for a violation of the Universal Military Training and Service Act.

### OPINIONS BELOW

There is an opinion of the Court of Appeals. While it is not yet reported it appears in the record. The court affirmed

on the opinion of the District Court. (Appendix A, p. 26, *infra*) The opinion of the District Court is not reported. (R. 7-25)[1]

## JURISDICTION

The judgment of the Court of Appeals was entered in this case on May 7, 1957. (SeeAppendix B, *infra*, page 35.) The time for filing this petition for writ of certiorari expires June 6, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1). (See also Rules 37 (b) (2) and 45 (a), Federal Rules of Criminal Procedure.) The District Court had jurisdiction under 18 U. S. C. § 3231.

## QUESTIONS PRESENTED

I.

Where petitioner registered with his local board in the Northern District of New York, was ordered by his local board to perform civilian work in the Northern District of New York, thereafter was relieved of such work because of his physical condition but was subsequently ordered by the State Director—and not assigned by his local board—to do work in the Southern District of New York, which order he refused to comply with, does the District Court for the Southern District of New York have no jurisdiction to prosecute and convict the petitioner?

II.

Does the letter of the State Director to the petitioner dated February 4, 1955, commanding him to report at the Hudson River State Hospital, Poughkeepsie, New York, constitute a valid order of the local board under Section 1660.20 (d) of the Regulations (32 C. F. R. § 1660.20 (d))?

[1] Numbers appearing herein within parentheses preceded by "R." refer to the appendix to appellant's brief in the Court of Appeals which was printed separately. It is filed as a part of the record (Vol. I) in this case.

## STATUTES INVOLVED

The pertinent portions of the Universal Military Training and Service Act, 62 Stat. 604, as amended, 65 Stat. 75, provide:

Section 6 (j) of the Act (50 U. S. C. App. § 456 (j)):

"* * * Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, * * * if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. * * *"

Section 12 (a) of the Act (50 U. S. C. App. § 462 (a)):

"* * * Any * * * person * * * who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *."

## SELECTIVE SERVICE REGULATIONS INVOLVED

The pertinent Regulations appear in 32 C. F. R., Parts 1606, 1622 and 1660. Since these Regulations are extensive they are printed as Appendix C, *infra*, pages 35 to 43. They are also quoted in the opinion of the trial court. (R. 14-20)

## STATEMENT OF THE CASE

This criminal action was brought by indictment charging petitioner with a violation of the Universal Military Training and Service Act. (50 U. S. C. App. §§ 451-470) Petitioner was charged with failing and refusing to perform civilian work contrary to the Act. (R. 5) The petitioner pleaded not guilty. (R. 3)

The petitioner, before pleading to the indictment, brought on a notice of motion to dismiss the indictment for a want of jurisdiction and lack of venue because the offense was not committed in the Southern District of New York. (R. 25-31)

The Government in its affidavit in opposition conceded that the petitioner "never left the Northern District of New York." (R. 32) The court denied the motion to dismiss and held there was jurisdiction for the prosecution in the Southern District of New York. (R. 32)

The case proceeded to trial before the judge without a jury, which was waived. (R. 3) Testimony was received and documentary evidence admitted into the record. (R. 33-44) At the close of all the evidence, in the motion for judgment of acquittal, the petitioner contended that jurisdiction for the offense lay in the Northern District of New York and not in the Southern District of New York. (R. 45) This ground of the motion for judgment of acquittal was overruled. (R. 7-8)

In the motion for judgment of acquittal petitioner contended that the local board did not make an order of assignment for the performance of work at the Hudson River State Hospital and that the refusal of the petitioner to comply with the letter of the State Director, dated Febru-

ary 4, 1955, was not in conformity with Section 1660.20 (d) of the Selective Service Regulations and, therefore, the petitioner did not violate the Act or the Regulations in failing to comply therewith. (R. 45) This ground of the motion for judgment of acquittal was overruled for reasons stated extensively in the written opinion of the trial court. (R. 7-25)

The trial judge found petitioner guilty, entered a judgment of conviction and sentenced petitioner to eighteen months in the custody of the Attorney General of the United States and fined him One Thousand Dollars ($1,000.00). (R. 3-4, 6, 7-25) The court filed a written memorandum giving reasons for the judgment rendered. (R. 7-25)

The case was duly appealed to the court below. (R. 47) The case was duly briefed, argued and submitted, resulting in an affirmance of the conviction.

## STATEMENT OF FACTS[2]

The petitioner was born on February 18, 1933. He is registered with Local Board No. 58, 1200 Chimes Building, Syracuse 2, New York. (F. 4, 5)[3] The local board mailed the classification questionnaire to him on December 4, 1951. (F. 4, 5) He answered the questions in the questionnaire and filed it with the local board on December 17, 1951. (F. 5) He gave his name, address, telephone number and social security number. (F. 6) He showed his education, as well as place and date of birth. (F. 10) He showed he was conscientiously opposed to participation in war in any form by signing Series XIV of the questionnaire. (F. 11) A special form for conscientious objector which was mailed to him by the local board on December 17, 1951, was filled out and filed on December 28, 1951. (F. 14) In this form the petitioner showed he was conscientiously opposed to his participa-

[2] The statement of facts appearing in the opinion of the trial court is correct and may be accepted by this Court for the purposes of decision in this case. (R. 7-13)

[3] Numbers appearing herein within parentheses preceded by "F." refer to penciled page numbers shown in the upper right-hand corner of the papers in the draft board file, which is Government's Exhibit 3, called the cover sheet.

tion in both combatant and noncombatant military service. (F. 14-17) Accompanying this form was a statement by the presiding minister of the Syracuse Northeast congregation of Jehovah's Witnesses, dated December 28, 1951, certifying that Allen Turner regularly attended meetings of the congregation and was in attendance at the Theocratic Ministry School. (F. 80)

On January 8, 1952, the local board placed the petitioner in Class I-O, which classification made him liable for the performance of civilian work in lieu of induction into the armed forces. (F. 12) This classification was continued on October 21, 1952. (F. 12) On January 27, 1953, he was directed to report for armed forces physical examination on February 3, 1953. (F. 12, 79) He was found to have a hernia (F. 74) but was accepted and so informed on February 20, 1953. (F. 12, 71) He was thereafter sent by the State Employment Office to the Good Shepherd Hospital but was not accepted because of the hernia. (F. 58; R. 35-36) He was thereafter operated on for the hernia on May 28, 1953. (F. 54; R. 36)

On August 31, 1953, the petitioner voluntarily entered the employment of Auburn City Memorial Hospital, at Auburn, New York. (F. 3, 38, 44; R. 37-40) The local board thereafter found out that he was thus employed and on September 18, 1953, issued to the petitioner an order reading as follows:

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SELECTIVE SERVICE SYSTEM
ORDER TO REPORT FOR CIVILIAN WORK
AND STATEMENT OF EMPLOYER

Local Board No. 58
1200 Chimes Bldg.
SEP 18 1953 [SEAL] Sept. 18, 1953
500 S. Salina St. (Date of mailing)
Syracuse 2, N.Y.
(Local Board Stamp)

To (First name) ALLEN (Middle name) D. (Last name) TURNER

(Selective Service Number) 30 58 33 49

Mailing address (Street and number) 219 Ashworth Place (City) SYRACUSE (Zone) (State) NEW YORK

Having been found to be acceptable for civilian work contributing to the maintenance of the national health, safety, or interest you have been assigned to Auburn City Memorial Hospital located at Auburn, N.Y.

You are ordered to report to *the Auburn City Memorial Hospital, Auburn, N. Y.*[4] at 8:00 A m. on the 28th day of Sept., 1953 where you will be given instructions to proceed to the place of employment.

You are ordered to report for employment pursuant to the instructions of the local board, to remain in employment for twenty-four (24) consecutive months or until such time as you are released or transferred by proper authority.

You will be instructed as to your duties at the place of employment.

Failure to report at the hour and on the day named in this order, or to proceed to the place of employment pursuant to instructions, or to remain in this employment the specified time will constitute a violation of the Universal Military Training and Service Act, as amended, which is punishable by fine or imprisonment or both.

[Signed]

(Clerk or Member of the Local Board)

[4] See the original order in the draft board file at page 22a of appendix for the United States in the court below (Vol. II of the record in this case). There it shows that the words "local board named above" were stricken out and the words above italicized were inserted instead thereof.

Statement of Employer

The registrant identified above reported for civilian work on the 31st day of August, 1953, to

Name of Employer AUBURN MEMORIAL HOSPITAL

Address of Employer (Street address) 5-19 Lansing Street

(City) Auburn (Zone) (State) New York

C. F. Harrienger
(Signature of employer or agent)

C. F. Harrienger,
Personnel Director
(Title)

SSS Form No. 153

On July 4, 1954, petitioner was discharged from this place of employment because his position was abolished and he could not adjust himself to another type of work at the hospital. (F. 38, 39; App. 37-40) Efforts were made by the State Director to relocate him. (F. 33-36)

On February 4, 1955, the State Director wrote to the petitioner as follows:

> Since your services at the Auburn Memorial Hospital were terminated before you had completed the required 24 months, you are hereby directed to report to Mr. Joyce at the Hudson River State Hospital, Poughkeepsie, New York, on Wednesday, February 16, 1955 at 8:30 A. M. for hospital work.

(R. 41) A carbon copy was sent to the local board and to the Hudson River State Hospital. (F. 29)

On February 7, 1955, the petitioner replied to the letter from the State Director, stating that he was not going to report to the Hudson River State Hospital at Poughkeepsie, New York. He wrote this letter from his address in Syracuse, New York, and addressed it to the Selective Service

System headquarters at 98 Fuller Road, Albany 5, New York. The letter appears in the file. (F. 19-20; R. 42-44)

On February 9, 1955, a letter was written to the Director of Selective Service at Washington, D. C., by the office of the State Director, as follows:

> On August 31, 1953 the above-named began his hospital work at Auburn City Hospital, Auburn, New York and on October 6, 1953 he was classified in Class I-W. The assignment was secured for the registrant by the New York State Employment Service.
>
> On July 4, 1954 the services of Mr. Turner were terminated by the hospital for the reason given in their letter dated July 9, 1954 addressed to the local board. Since this termination was not due to the misconduct of the registrant, steps were taken to secure similar employment for him. On November 29, 1954 a letter was written to the registrant from this headquarters advising him of approved agencies where the vacancies might possibly exist. Not hearing from him in responce to our letter, we wrote to him again on January 6, 1955. No reply was received however and on February 4, 1955 with the permission of the State of New York Department of Mental Hygiene, the registrant was ordered by letter to the Hudson River State Hospital, Poughkeepsie, New York to begin employment on February 16, 1955.
>
> Enclosed is a letter dated February 7, 1955 received from the registrant.
>
> We would appreciate receiving your advice as to what action should be taken now since it is apparent that Mr. Turner does not intend to report to the Hudson River State Hospital on February 16, 1955.
>
> Enclosed is the complete file of Mr. Turner. (F. 2)

On March 4, 1955, the Director of Selective Service wrote to the State Director at Albany, New York, as follows:

> Reference is made to your letter dated February 9, 1955, in which you requested advice as to action to be taken in the case of the above-named registrant who indicated that he did not intend to report to the Hudson River State Hospital on February 16, 1955.
>
> If this registrant actually did not report for employment, the statement required by Operations Bulletin No. 108 should be prepared and filed in the cover sheet. The cover sheet may then be referred to this Headquarters for consideration as to prosecution under section 1660.31 (a) of the regulations.
>
> The cover sheet is returned herewith. (F. 1, 18)

The petitioner did not leave Syracuse. He did not report to his local board at Syracuse and he did not report to the Hudson River State Hospital at Poughkeepsie, New York. (R. 13)

## REASONS FOR GRANTING THE WRIT

### I.

An important question of venue under the Constitution, the federal statutes on venue and the Rules of this Court on venue are here presented. While this Court indirectly touched upon this question in *Johnston* v. *United States*, 351 U. S. 215 (1956), the question here involved was not directly determined in that case. It is whether the complete refusal or failure of the local board and the Selective Service System to order the petitioner to report to the local board before proceeding out of the district failed to give venue to the trial court in this case, where the petitioner did not leave the district when ordered to do so—not by the local board but by the State Director of Selective Service. This is an important question under the Constitution which has not been but which should be determined by this Court.

Article III, Section 2, of the United States Constitution provides in part as follows:

> "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; * * *"

The Sixth Amendment to the United States Constitution reads in part as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, * * *"

The court below says that *Johnston* v. *United States*, 351 U. S. 215 (1956), is in point. That is not so, because the local board order itself in that case commanded the registrant to proceed out of the district to do work in another district. The order in that case given to the registrant was not by an interloper or by one having no statutory authority as here. The statute gave the local board in that case the sole authority to order the registrant to do work out of the Western District of Pennsylvania. It alone had authority to order him to proceed to the Eastern District of Pennsylvania. The failure to take the second step called for in the order in that case occurred outside the district in that case.

In this case the facts are entirely different. The hospital to which the local board ordered petitioner to proceed was located in the Northern District of New York at Auburn. The place to which the local board ordered petitioner was not in the Southern District. The local board in this case at no time selected work or ordered petitioner to go do civilian work out of the Northern District.

It should be noticed that Section 6 (j) of the Act limits the offense to the refusal to comply with an order of a local board. The statute does not make the refusal to comply with an order of any other person or agency an offense.

In the absence of a specific statutory command from the local board for Turner to proceed out of the Northern District to the Southern District there can be no venue or jurisdiction of the offense alleged to have occurred in the Southern District of New York. The violation of the order made by the State Director to do work out of the Northern District of New York was not an offense within the meaning of Section 6 (j) of the Act so as to place venue in the Southern District of New York.

The decision in *Johnston* v. *United States*, 351 U. S. 215 (1956), misses this case by a mile. It is not in point because the local board in this case did not order Turner to do work outside the Northern District of New York or in the Southern District of New York.

The reason that *Johnston* v. *United States*, 351 U. S. 215 (1956), was decided so as to give venue outside the district where the local board was located was because the registrants reported at the local board in obedience to the first order appearing in the printed form. They then refused at the local board to take the second step or proceed to the place of employment out of the local district. In *Johnston* v. *United States* the Court said that the place of venue "is determined by the acts of accused that violated the statute." —*Johnston* v. *United States*, 351 U. S. at pages 220-221.

That decision also pointed out that the formal order commands two duties. "The first is to report to the local board. This was done by each registrant. The second is to report for employment and remain there for 24 consecutive months." (*Johnston* v. *United States*, 351 U. S. at page 222) The *Johnston* case, therefore, involved a crime arising from "failure to complete the second duty—report for employment. Accordingly venue must lie where the failure occurred."—351 U. S. at page 222.

In this case the contrary results. The printed order of the local board, which could not be altered, commanded Turner to report at the local board for the purpose of being given instructions to proceed to the hospital. Since

the typewritten alteration is a nullity, the offense in this case was the failure of Turner to report at the local board to proceed to the place of employment out of the district, as he was commanded by the State Director. This was the failure to take the first step.

Inasmuch as the parties have stipulated that it is the refusal to comply with the local board order that constitutes an offense, and, inasmuch as the petitioner failed to report to the local board to receive instructions to proceed to the Hudson River State Hospital at Poughkeepsie, the offense in this case is entirely different from the offense described in *Johnston* v. *United States*, 351 U. S. 215 (1956).

There the offense was the failure to take the second step commanded in the order. Here the offense was the failure to take the first step in the order, namely, refusal to report at the local board "where you will be given instructions to proceed to the place of employment." See the photostatic copy of the draft board order, appearing at page 22a of the appendix for the United States in the court below, Vol. II of the record. It is manifest that the case of *Johnston* v. *United States*, 351 U. S. 215 (1956), does not support the Government but, to the contrary, it supports the petitioner in this case, because, as stated by the Court, "the first duty is to report to the local board." —351 U. S. 215 at page 223.

The situation here is identical to a situation where the local board orders a registrant, contrary to the Selective Service forms, to appear directly at some distant place of induction rather than commanding him (as required by the forms) to report at the local board and then proceed to the place of induction. In such a situation it must be conceded that a failure to proceed to the place of induction would not be the offense. The offense could only be failure to take the first step required by the law, which is to report to the local board. The offense in such case could not be the failure to take the second step, the beginning

of which, or the order to take which, was never legally reached by the registrant as required by law.

All three of the registrants involved in *Johnston* v. *United States*, 351 U. S. 215 (1956), reported to the local board and there refused to take the second step. Had they not reported to the local board the decision would have been different. There is no jurisdiction in the place where the work was to be performed in this case because the petitioner failed to report to the local board. This is the interpretation of the *Johnston* decision by the Department of Justice and the Selective Service System. This was the position taken by the Solicitor General before the Court in his brief in No. 643, October Term, 1955, at pages 32-35 and 51. This interpretation of the Act and Regulations by the Government seems to have been accepted by the Court in *Johnston* v. *United States*, 351 U. S. 215 (1956).

It is true that petitioner was not ordered to appear at the local board. But he was commanded—not by the local board but by the State Director—to proceed directly to the place of work. This was not a legal order sufficient to give jurisdiction because it was made by the State Director and not by the local board. Had the order been issued by the local board it would have used the regular form (SSS Form No. 153), thereby commanding the petitioner "to report to the local board." The form of the order must be followed in every case and cannot be altered by the local board or by the State Director.—32 C. F. R. §§ 1606.51 and 1606.52, *infra*, page 36.

It was beyond the authority of the local board or the State Director, acting for the local board, to order the petitioner to report directly to the hospital. The forms, which are made a part of the law, required that he be ordered to report first at the local board.

The attention of the Court is directed to the second paragraph of the local board order. In the first line it will notice that an attempt was made by the local board to strike out the statutory words appearing in the printed form: "local

board named above" and in lieu thereof there are typed in the following words: Auburn City Memorial Hospital, Auburn, N.Y. (See page 22a of the appendix for the United States in the court below, Vol. II of the record.) This action of the local board in thus altering the statutory form so as to eliminate the first step of reporting to the local board first before going to the hospital constituted a violation of 32 C. F. R. §§ 1606.51 and 1606.52 This was an illegal effort to cut out of the Selective Service procedure the first step prescribed by the Regulations for conscientious objectors in the process of selection and assignment. The first step is to report first to the local board "where you will be given instructions to proceed to the place of employment."

Note also the last paragraph of the order, where it is stated: "Failure to report at the hour and on the day named in the order" to the local board is said to be an offense. It is significant that this offense is entirely different from the failure to comply with the second step, or proceeding to the hospital, which is also quoted in that same paragraph of the order of the local board.

Illegally striking out the first step prescribed in the order form (which is a part of the Regulations) by the local board, the court below says, vested authority to order the registrant to proceed directly to the place of employment and bypass the first step to the local board. The alteration of the order, being illegal, is of no effect. The first step commanded in the order was that the petitioner report to the local board. The petitioner failed to report to the local board. The offense committed, therefore, in this case is a failure to report to the local board first before proceeding to the place of employment.

Since the forms cannot be changed, it is impossible under the Act and the Regulations to ignore the first step of reporting to the local board commanded by law that was violated by the registrant in this case. Failure to report to the local board is not an offense committed in the Southern District of New York; it is an offense that

was committed only in the Northern District of New York.

The violation of the Regulations by ordering petitioner to report directly to the hospital and not first to the local board does not confer jurisdiction upon the court below.

The jurisdiction of the offense is restricted by the Act and the Regulations. It cannot be expanded or changed by illegal acts of the State Director in ordering steps contrary to the forms which are made a part of the law.

It is submitted, because petitioner did not report to the local board and there refuse or fail to proceed, that no refusal or failure to act occurred in the Southern District of New York. There is, accordingly, no jurisdiction or venue of the offense in the District Court in this case.

## II.

Related to the question above described, the first question presented, is the second question above stated. It involves a proper interpretation of the Act and the Selective Service Regulations, which prohibit the State Director of Selective Service from making the assignment for work and issuing an order for work to the petitioner to do civilian work under the Act. The Act and the Regulations relegate this right to the local board. This second question, therefore, involves an important question as to the administration of the Act and the Regulations providing for civilian work to be done by conscientious objectors. The question is of wide public importance and one that has not been heretofore determined by this Court but which ought to be decided in the national interest.

The Act and the Regulations do not make it an offense to refuse to obey an order of the State Director. There are no provisions, in fact, for an offense to be based upon refusal to obey an order of the State Director. The Act mentions only the orders of the local board. The Regulations specifically mention the orders of the local board. Neither makes mention of any order of the State Director or by any other person. Section 6 (j) of the Act (50 U. S. C. App.

§ 456 (j), 62 Stat. 604, as amended, 65 Stat. 75) provides that one who has been classified as a conscientious objector shall "be ordered by his local board . . . to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate." It should be observed that the Act prescribes for the order to be made by the local board and that the work shall be selected by the local board.

The position taken by the court below is contrary to the statute. Section 6 (j) of the Act (50 U. S. C. App. § 456 (j)) prescribes that the order to perform the civilian work not only be given by the local board but also that the type of work to be performed must first be selected by the local board or must be the type of work that the "local board may deem appropriate." The Act, therefore, by explicitly naming the local board as the agency to select the type of work as a corollary, excludes the State Director from 'deeming appropriate' the type of work to be performed by the registrant. A reasonable interpretation of the statute rejects completely the misinterpretation of the Regulations by the court below, which Regulations prescribe that the new and additional work must be designated by the local board.

Section 1660.30 of the Selective Service Regulations (32 C. F. R. § 1660.30) should be read. See this petition, *infra*, at page 41.

Section 1660.20 (a) of the Regulations provides for the issuance of the only order that was ever actually given by the local board in this case dated September 18, 1953. This order commanded the petitioner to appear at the Auburn City Memorial Hospital in Auburn, New York. This order was issued pursuant to Section 1660.20 (a) of the Regulations. See this petition, *infra*, at page 38.

The Act does not support the holdings of the courts below that an order can be made by an interloper or someone not authorized by the Act or the Regulations. It is noticed

that 32 C. F. R. § 1660.21 (c) says that the registrant "shall . . . be ordered by his local board." The petitioner in this case was not ordered by his local board to perform the civilian work at the state hospital located at Poughkeepsie. It is said by the court below that the Regulations do not specify or specifically state that the local board should order the registrant to his new assignment. But it is equally true that the Regulation itself does not state that the State Director is authorized to issue the order for the new work. The Regulation says that the registrant should by the local board be ordered "to perform the same type of work with another employer."

The heading of the Regulation throws some light on the problem. The heading indicates that orders may be made only by the local board. The heading of the regulation reads as follows: "*General provisions relating to orders by the local board to perform civilian work and performance of civilian work.*" The very fact that the heading mentions that the local board shall order a registrant to perform civilian work indicates that the President had in mind that the local board should issue the order and not the State Director. Had the President intended the State Director to issue the order to perform "the same type of work with another employer," as used in the Regulation, it could have been very easily stated. Failure of the President to mention that the State Director could order the performance of "the same type of work with another employer" proves that the President had in mind that the order be issued by the local board.

In the first clause of Section 1660.21 (c) the initial order is prescribed to be made "by the local board." The use later in that section of the Regulations of the term "shall be ordered" merely implies that the order must be made by the local board and not by any other.

It may be argued that the State Director is the "proper authority" mentioned in Section 1660.21 (c), which specifies in the last sentence that a registrant, after being ordered

to do civilian work, cannot leave such work "unless transferred by proper authority." If the President had had the State Director in mind, the State Director, instead of the local board, would have been named in the Regulations. It would have been easy to add the words: "State Director." The broad and general term "proper authority" in the sentence about *release* from work is restricted by more specific provisions of Section 1660.21 (c), which say early in the section about *transfer* from job to job that the registrant "shall . . . be ordered by his local board." It is submitted that such would be an erroneous interpretation of Section 1660.21 (c) and Section 1604.12 of the Regulations.

Section 1660.21 (c) about transfer of work from one place to another relates to orders by the local board. Note that the opening words of the Regulation say: "General provisions relating to orders *by the local board* to perform civilian work and *performance of civilian work.*" (Emphasis added.) The words "should be ordered" and "comply with this order" used in 32 C. F. R. § 1660.21 (c) relate to action taken by the local board. They do not pertain to action of the State Director which would usurp the authority vested in the local board. Had the President intended to give the State Director such authority in this Regulation, the State Director would have been mentioned along with the local board in the Regulation.

This could not be left to implication by importation from outside the Act and Regulations, as it must be under the construction placed upon the Regulation by the Government. The Regulation is not ambiguous. It relates to the local board. The illegal administrative interpretation of the Selective Service System and the National Director, whereby the State Director has usurped the authority of the local board under this Regulation, putting it in conflict with the statute and the Regulations must be rejected.

It is stated by the court below that the Regulations do not require the local board to reassign the conscientious objector to another position if the first work assignment

is terminated. This statement, as has been shown above, is contradicted by the explicit provisions of 32 C. F. R. § 1660.-21 (c). This position taken by the petitioner, that the local board must reassign the registrant, is not only supported by the Regulations. The contention is also backed up by the statute.

Section 10 of the Act (50 U. S. C. App. § 460 (b) (3)) explicitly provides that the "civilian local boards" are granted authority to carry out functions of the President under the Act "with respect to the registration, examination, classification, selection, *assignment* . . . together with such other duties as may be assigned under this title." (Emphasis added.) Title 50 of the Act in Section 6 (j) specifically states that, in respect to the civilian work to be performed by conscientious objectors, the work must be that type "as the local board may deem appropriate."

Since the local board must determine the appropriateness of the civilian work to be performed by conscientious objectors, then of necessity it follows that the word "assignment" used in Section 10 of the Act (50 U. S. C. App. § 460 (b) (3)) refers to assignment by the local board for civilian work by each conscientious objector. It follows, therefore, that the statute specifically limits the authority to make assignment of civilian work to be performed by conscientious objectors at any time to the local board and it only. The statute limits the assignment and the right to deem appropriate the type of work to be performed to the local board. This function cannot be usurped, therefore, by the State Director through an administrative interpretation of Section 1660.21 (c) of the Regulations, relied upon by the Government in this case.

The Act confines all orders to registrants to the local board. The very fact that Congress failed to authorize any other person or agency to issue the orders necessarily shows that Congress intended that no other person or agency could issue an order to a registrant.

It was argued in the court below, because the Regulations authorized the Director of Selective Service to prescribe regulations "for the administration of" the machinery of the Selective Service System and to issue "instructions as shall be necessary for the carrying out of the functions of the Selective Service Regulations" these Regulations constitute specific authority to overrule the Congress and to usurp the authority of the local board prescribed by Section 1660.21 (c) of the Selective Service Regulations.

The authority granted to the Director to run the Selective Service System does not mean at all that he has unlimited authority to usurp the statutory authority of the local boards and the duties delegated to the local boards by the President in the Selective Service Regulations.

It is noticed that Section 1604.1 of the Regulations comes under the heading of the national administration. It speaks only of the National Director of Selective Service. There is no reference whatever in that part of the Regulations to the authority of the State Director to make orders.

Section 1604.12 relates to powers of the State Director. The only authority granted to the State Director is that stated, which is that he "shall have responsibility for carrying out the functions of the Selective Service System in his State." (32 C. F. R. § 1604.12) The general terms of this section contain nothing that indicates an intention by the President to allow the State Director to usurp the functions of the local board prescribed in Section 1660.21 (c) of the Regulations. To contend that the general regulation overrules the specific would bring it into conflict with the express provisions of the statute.

The trial court held that Section 1660.31 of the Regulations (32 C. F. R. § 1660.31) supports its judgment. (R. 24) Emphasis is placed upon "the responsibility" of the State Director "to see that the registrant performs the work to which he has been ordered by the local board." But this gives no support to the opinion. The supposed "support" falls when emphasis is placed upon the words of the

section, "ordered by the local board." The Regulation does not say "ordered by the State Director." The State Director is merely constructively to stand watch over the registrant and see to it that he does the work. The Regulation does not purport to give the State Director the authority to order the registrant to do work or make an order for the local board, which by Section 1660.21 (c) is limited to the local board.

It is held by the trial court—and this is erroneous—that, upon reporting to the hospital, the registrant passes out from the jurisdiction of the local board and comes within the control of the State Director. (R. 21-23) The Regulation does not so state. The only authority that the State Director is given is to see to it that the registrant performs the work assigned by the local board and not by the State Director. The State Director is merely the agent of the local board to enforce the order of the local board. The fact that the State Director is given authority to *police the registrant* and see to it that he complies with the order does not give the State Director the authority to usurp the exclusive jurisdiction of the local board to reassign the registrant, according to Section 1660.21 (c). The fact, therefore, that the State Director acts as a policeman for the local board does not oust the local board of its authority. The Act and the Regulations prescribe that the registrant shall be liable to perform only such work as "the local board may deem appropriate." (50 U. S. C. App. § 456 (j), 62 Stat. 604) Since the Act and the Regulations state that the local board is the one to determine the appropriateness of the work there is no authority for the holding that the State Director can oust the jurisdiction of the local board.

The trial court took the position that the "manual for the guidance of State Directors of Selective Service entitled 'The Conscientious Objector Work Program Manual,' issued by General Hershey, Director of Selective Service, is supreme over and above the Selective Service Regulations. (R. 21-23)

It is true that the Director of Selective Service has authorized the State Directors Advice (an administrative interpretation to "transfer a registrant to another job" but this authorization by the Director of Selective Service is unauthorized by the regulations. The provisions of the manual defy the orders of the President of the United States expressed in the Regulations. The administrative misinterpretation of the Regulations in conflict with the regulations cannot be followed by the Court.

It is true that in cases of ambiguity in the law or the regulations a long and well-established administrative interpretation may be relied upon to fill in a gap and replace a hiatus. But there is no gap in the Regulations involved here. No ambiguity is present. Since the Act is plain and the Regulations are specific, that the order must be by the local board, it is not permissible for the court to rely upon an erroneous misinterpretation of a regulation or law by an administrator, regardless of how old it may be. Surely the misinterpretation and misunderstanding of General Hershey of the commands of the President of the United States, when there is no ambiguity in the Regulations promulgated by the President and when the misinterpretation of General Hershey conflicts with the words of the President, cannot be said to be supreme and entitled to "persuasive weight."

It must be conceded that the State Director has no authority to order a registrant to enter the armed forces. If a registrant has been ordered by the local board to submit to induction into the armed forces it is the local board —and the local board only—that can extend the time for reporting for induction. Since it must be conceded that the State Director has no authority to order a registrant to do military service it must be agreed that he has no authority to command a registrant to change from one place of employment to another place, which authority is relegated to the local board. Why the difference because petitioner is a conscientious objector?

The trial court held that the situation here is the same as though the registrant were ordered to transfer from one camp to another after he has submitted to induction. (R. 21, 23) But this analogy is not true. When and only when a registrant becomes a soldier in the armed forces he takes on a different status. He is not liable to military orders until he submits to induction. (*Billings* v. *Truesdell*, 321 U. S. 558, 559 (1944)) The conscientious objector is not liable for compliance with any orders until he gets them from the local board. The conscientious objector is not a member of the armed forces and the State Director cannot, as a member of the armed forces, order the registrant to change his "station." This is especially true when it is considered that only the local board—and not the State Director—is authorized by the Regulations to make an order or any assignment for civilian work for a conscientious objector.

The order of the State Director is that of an interloper, as far as the Act and the Regulations are concerned. An order by the Governor of New York State would not have been an order of the local board. An order by a congressman or by the United States Attorney for the Northern District of New York would not have been an order of the local board. By force of the same reason the order of the State Director is not an order of the local board. Since there is no local board order commanding Turner to do work at the state hospital at Poughkeepsie there has been no violation of the law. It is the same as was stated by Mr. Justice Douglas in *Estep* v. *United States*, 327 U. S. 114, 120 (1946): "It is only orders 'within their respective jurisdictions' that are final. It would seem, therefore, that if a Pennsylvania board ordered a citizen and resident of Oregon to report for induction, the defense that it acted beyond its jurisdiction could be interposed in a prosecution under § 11."

It is manifest that the order issued by the State Director was equivalent to no order at all. It was the same as though

nobody had ordered the petitioner to report at the state hospital and do work. The order issued here by the State Director had no more force and effect than an order issued by a stranger or an alien, even, as far as the facts in this case are concerned. There being no valid order issued by the local board, it means, of necessity, that the Court must conclude that the failure to comply with the order in question was not a violation of the Act and Regulations as charged in the indictment.

This case is a simple one. It is purely a matter of agency jurisprudence. Assume that an agent for a corporation violated express commands of the corporation and did something not within the actual scope of his employment. Would it be an act that would bind his principal? No. So also it is here. The State Director acted beyond the scope of his authority when (1) he deemed the statutory appropriateness of the work which belonged to the local board, and (2) he made the assignment to do new work, which could be done only by the local board.

## CONCLUSION

The petition for writ of certiorari should be granted for the reason that important questions of federal law of wide national interest are here presented which have not heretofore been decided by this Court but which ought to be determined by it.

Respectfully submitted,

HAYDEN C. COVINGTON

*Counsel for Petitioner*

June, 1957.

## APPENDIX A

## UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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No. 276—October Term, 1956.

(Argued April 11, 1957 Decided May 7, 1957.)

Docket No. 24389

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

—against—

ALLEN D. TURNER,

*Defendant-Appellant.*

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Before:

HAND, MEDINA and WATERMAN,

*Circuit Judges.*

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Appeal from a judgment of the United States District Court for the Southern District of New York, Gregory F. Noonan, *Judge.*

Defendant appeals from a judgment of conviction for failing and refusing to obey an order of his local board to report for civilian work contributing to the maintenance of the national health, safety and interest in lieu of induction into the armed forces, in violation of the Universal

Military Training and Service Act, 50 U. S. C. App., Section 462. Affirmed.

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PAUL W. WILLIAMS, United States Attorney for the Southern District of New York, New York City (John T. Moran, Jr. and Robert Kirtland, Assistant United States Attorneys, New York City, of Counsel), *for plaintiff-appellee.*

HAYDEN C. COVINGTON, Brooklyn, New York, *for defendant-appellant.*

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MEDINA, *Circuit Judge:*

Allen D. Turner is one of the group known as "Jehovah's Witnesses." Having served for ten months at the Auburn Memorial Hospital, in Auburn, New York, after his classification as a conscientious objector, which service was terminated, he was later directed to serve the balance of his term of service of twenty-four months at Hudson River State Hospital, in Poughkeepsie, New York. It is not disputed that he wilfully and knowingly failed and refused to comply with this direction; and for this refusal he has been convicted of a violation of the Universal Military Training and Service Act, 50 U. S. C. App. Section 462, and sentenced to eighteen months imprisonment and the payment of a fine of $1,000. The principal issue raised on this appeal is the legality of the direction that he report at Poughkeepsie. The substance of his claim is that this direction was not made by his local board but was contained in a letter from the New York State Director of Selective Service.

As appellant's claim is a technical one, we think a full statement of the factual background will make it easier

to understand the interrelation of the various applicable statutes and regulations.

Appellant, a resident of Syracuse, New York, was born on February 18, 1933; he is a registrant with local board No. 58 in Syracuse; and in due course received and filled out SSS Form 150, which led to his classification I-O, as a conscientious objector, on January 8, 1952. He reported for physical examination on February 3, 1953, and was found acceptable although suffering from a hernia.

On February 20, 1953, the local board mailed to appellant SSS Form 152, entitled "Special Report for Class I-O Registrants," which required appellant to submit three types of work that he was qualified to perform. He failed to do this but merely wrote in answer to the questions relative to the three types of work: "To serve Almighty God with all my heart and soul." He was directed by the local board, however, to report to the New York State Employment Office for the purpose of determining his qualifications for civilian work, and the upshot of his interview was that employment in the Hospital of the Good Shepherd in Syracuse was offered and he accepted; but the actual assignment was deferred pending an operation to cure the hernia. After the operation the surgeon reported that appellant was physically fit to commence work on July 14, 1953.

The New York State Employment Service advised the local board on August 21, 1953, that it expected to place appellant in Auburn Memorial Hospital within a week; and in fact he reported for work and commenced his employment at Auburn Memorial Hospital, 5-19 Lansing Street, Auburn, New York, on August 31, 1953. Accordingly, on September 18, 1953, appellant's local board issued to him the following order, on SSS Form 153, which is the basic order, and appellant's conviction is the result of his wilful failure to comply with the terms thereof:

Selective Service System

ORDER TO REPORT FOR CIVILIAN WORK AND STATEMENT OF EMPLOYER

[Selective Service]

[ System Seal ]

Sept. 18, 1953

Allen D. Turner, 30 58 33 49
219 Ashworth Place
Syracuse, New York

Having been found to be acceptable for civilian work contributing to the maintenance of the national health, safety, or interest you have been assigned to Auburn City Memorial Hospital located at Auburn, N. Y.

You are ordered to report to the Auburn City Memorial Hospital, Auburn, N. Y. at 8:00 a.m. on the 28th day of Sept., 1953, where you will be given instructions to proceed to the place of employment.

You are ordered to report for employment pursuant to the instructions of the local board, to remain in employment for twenty-four (24) consecutive months or until such time as you are released or transferred by proper authority.

You will be instructed as to your duties at the place of employment.

Failure to report at the hour and on the day named in this order, or to proceed to the place of employment pursuant to instructions, or to remain in this employment the specified time will constitute a violation of the Universal Military Training and Service Act, as amended, which is punishable by fine or imprisonment or both.

[Signed]
(Clerk or Member of the Local Board)

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The registrant identified above reported for civilian work on the 31st day of August, 1953, to

Auburn Memorial Hospital
5-19 Lansing Street
Auburn, New York

[Signed]
C. F. Harrienger,
Personnel Director

On October 6, 1953, his local board classified appellant I-W, to signify that he was a conscientious objector performing civilian work.

On July 9, 1954, Auburn Memorial Hospital informed the local board that appellant's employment with the hospital had terminated on July 4, 1954, under circumstances casting no reflection upon appellant's character. He had served ten months of the required period of twenty-four.

The New York State Director for Selective Service, when notified of the termination of the original work assignment, advised appellant of various employment opportunities elsewhere as well as of appellant's obligation to seek such, and that he would be subject to assignment by the State Director if he failed to find employment himself. But appellant disregarded these various communications.

Accordingly, in a letter dated February 4, 1955, which appellant received in Syracuse, the State Director wrote:

> Since your services at the Auburn Memorial Hospital were terminated before you had completed the required 24 months, you are hereby directed to report to Mr. Joyce at the Hudson River State Hospital, Poughkeepsie, New York, on Wednesday, February 16, 1955 at 8:30 A.M. for hospital work.

The objection to venue in the Southern District of New York is wholly without merit, unless it be assumed that appellant's failure to report at the Hudson River State Hospital in Poughkeepsie, which is within the territorial limits of the Southern District of New York, was not a failure and refusal to obey a lawful order of his local board. The point was settled by the decision in *Johnston* v. *United States*, 351 U. S. 215, that "where the crime charged is the failure to do a legally required act, the place fixed for its performance fixes the situs of the crime."

Nor do certain criticisms of the form of the local board's "Order to Report for Civilian Work," dated September 18, 1953, warrant extended comment. The printed words "local board named above" were x-ed out, and over them was typewritten in, "Auburn City Memorial Hospital, Auburn, N. Y.," where appellant was ordered to report on September 28, 1953. We are told that 32 C. F. R. §§ 1606.51 and 1606.52 require the use of official forms, which must not be altered; that the regular procedure required that appellant be ordered to report to the local board, there to receive "instructions to proceed to the place of employment"; and that the insertion of the name and address of the hospital and the deletion of the words "local board named above" nullified the order. Indeed, the point is developed with considerable proliferation. It is asserted that everything depends upon the "first step," which is said to be reporting at the local board; and it is further claimed that a similar reporting at the board was an essential preliminary and jurisdictional prerequisite to the giving of any direction to report at the Poughkeepsie hospital.

We think these refinements wholly at variance with the scheme of the statute and the regulations. No essential or jurisdictional "step" was omitted; appellant had already voluntarily reported at the hospital in Auburn and was at work there before the order of September 18, 1953, was made.

This brings us to the crux of the case. The order of September 18, 1953, commanded appellant "to remain in employment for twenty-four (24) consecutive months or until such time as you are released or transferred by proper authority"; and the last paragraph of the order informed appellant that his failure "to remain in this employment the specified time will constitute a violation of the Universal Military Training and Service Act, as amended, which is punishable by fine or imprisonment or both." Was appellant's failure to obey the direction of the State Director to report at the hospital in Poughkeepsie a wilful refusal to comply with the order of the local board of September 18, 1953?

A careful examination of the underlying statute and the regulations promulgated pursuant to the authority conferred thereby has convinced us that it is the function of the local board to determine the type of civilian work to be performed by a registrant who has been classified I-O and to order the registrant to perform that work in lieu of induction into the armed forces; thereafter it is the function of the State Director to implement the order of the local board by seeing to it that the registrant performs for the requisite period the work he has been ordered by the local board to do. The legal effect of appellant's failure to obey the direction of the State Director to report to the hospital at Poughkeepsie was a refusal to comply with the order of the local board which determined the type of civilian work to be done and ordered appellant to do it.

The Congress has authorized the President "to prescribe the necessary rules and regulations to carry out the provisions" of the Act [50 U. S. C. App. Section 460(b)(1)], and to appoint a Director of Selective Service [50 U. S. C. App. Section 460(a)(3)] and a State Director for Selective Service in each state of the Union [50 U. S. C. App. Section 460(b)(2)]. Pursuant to such authority the regulations were prescribed and the Director was given power to "issue such public notices, orders, and instructions as shall be

necessary for carrying out the functions of the Selective Service System." 32 C. F. R. §1604.1(b). Each State Director has similar authority, subject to the direction of the Director. 32 C. F. R. §1604.12. Elaborate provisions were made to assure that conscientious objectors be given fair treatment, and at the same time carry a proper share of the burdens of citizenship.

True it is that the heading of 32 C. F. R. § 1660.21 reads, "General provisions relative to orders by the local boards to perform civilian work and performance of civilian work," but this taken together with the text of the Regulations makes it clear that the language is carefully chosen. The only reference to the local board is to the local board's order to report for civilian work. Section 1660.21 merely provides that "the registrant shall be ordered to perform the same type of work with another employer"; and the phraseology of SSS Form 153 refers to a transfer "by proper authority." That the direction to transfer as well as the general supervision of compliance by the registrant with the initial order of the local board are functions of the State Director, as held by Judge Noonan, is clear to us from the unambiguous and pertinent provision of Section 1660.31 of the Regulations:

> It shall be the responsibility of such State Director of Selective Service to see that the registrant performs the work to which he has been ordered by the local board for a period of twenty-four consecutive months, unless sooner released under the provisions of Section 1660.21.

We hold that the State Director by making a reassignment such as the one before us here is not usurping a function reserved to the local board; he is exercising the authority prescribed by Section 1604.12, carrying out the duty imposed upon him by Section 1660.31, and implement-

ing the original order of the local board assigning the registrant to civilian work.

Affirmed.

## APPENDIX B

## UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 7th day of May one thousand nine hundred and fifty-seven.

Present: HON. LEARNED HAND,
HON. HAROLD R. MEDINA,
HON. STERRY R. WATERMAN, Circuit Judges

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UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ALLEN D. TURNER,
Defendant-Appellant.

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Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

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## APPENDIX C

### *Section 1606.51 of the Regulations*

Section 1606.51 of the Selective Service Regulations (32 C. F. R. § 1606.51) (E. O. 9979, 13 F. R. 4188, July 22, 1948) provides:

### SELECTIVE SERVICE FORMS

"1606.51 *Forms made part of regulations.* (a) All forms and revisions thereof referred to in these or any new or additional regulations, or in any amendment to these or such new or additional regulations, and all forms and revisions thereof prescribed by the Director of Selective Service shall be and become a part of these regulations in the same manner as if each form, each provision therein, and each revision thereof were set forth herein in full. Whenever in any form or in the instructions printed thereon, any person shall be instructed or required to perform any act in connection therewith, such person is hereby charged with the duty of promptly and completely complying with such instruction or requirement.

"(b) The Director of Selective Service, as to such persons or agencies as he designates, may waive any requirement that any form be notarized or sworn to."

### *Section 1606.52 of the Regulations*

Section 1606.52 of the Selective Service Regulations (32 C. F. R. § 1606.52) (13 F. 4. 4420, July 31, 1948; redesignated at 14 F. R. 5021, Aug. 13, 1949) provides:

"1606.52 *Special forms must be authorized.* Whenever conditions within a State make necessary a form not prescribed by the Director of Selective Service or mentioned in the regulations in this chapter or the directives issued thereunder, the State Director of Selective Service shall, prior to adopting the proposed form, submit three copies thereof, together with a brief statement of the necessity

and proposed use, to the Director of Selective Service. The form shall not be used until approved by the Director of Selective Service.

*Section 1622.14 (a) of the Regulations*

Section 1622.14 (a) of the Selective Service Regulations (32 C. F. R. § 1622.14(a)) (as amended by E. O. 10420, 17 F. R. 11593, Dec. 19, 1952) provides:

"1622.14 *Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety or interest.* (a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and non-combatant training and service in the armed forces."

*Section 1622.16 (a) of the Regulations*

Section 1622.16 (a) of the Selective Service Regulations (32 C. F. R. § 1622.16 (a)) (E. O. 10292, 16 F. R. 9862, Sept. 28, 1951) provides:

"1622.16 *Class I-W: Conscientious objector performing civilian work contributing to the maintenance of the national health, safety, or interest.* (a) In Class I-W shall be placed any registrant who has entered upon and is performing civilian work contributing to the maintenance of the national health, safety, or interest, in accordance with the order of the local board."

*Section 1660.1 of the Regulations*

Section 1660.1 of the Selective Service Regulations (32 C. F. R. § 1660.1) (E. O. 10328, 17 F. R. 1650, Feb. 22, 1952) provides:

"*Definition of appropriate civilian work.* (a) The types of employment which may be considered under the provisions of section 6 (j) of title I of the Universal Military Training and Service Act, as amended, to be civilian work contributing to the maintenance of the national health, safety, or interest, and appropriate to be performed in lieu of induction into the armed forces by registrants who have been classified in Class I-O shall be limited to the following:

"(1) Employment by the United States Government, or by a State, Territory, or possession of the United States or by a political subdivision thereof, or by the District of Columbia.

"(2) Employment by a nonprofit organization, association, or corporation which is primarily engaged either in a charitable activity conducted for the benefit of the general public or in carrying out a program for the improvement of the public health or welfare, including educational and scientific activities in support thereof, when such activity or program is not principally for the benefit of the members of such organization, association, or corporation, or for increasing the membership thereof.

"(b) Except as provided in subparagraph (2) of paragraph (a) of this section, work in private employment shall not be considered to be appropriate civilian work to be performed in lieu of induction into the armed forces by registrants who have been classified in Class I-O."

*Section 1660.20 of the Regulations*

Section 1660.20 of the Selective Service Regulations (32 C. F. R. § 1660.20) (E. O. 10328, 17 F. R. 1650, Feb. 22, 1952) provides:

"*Determination of type of civilian work to be performed and order by the local board to perform such work* (a) When a registrant in Class I-O is found acceptable for service after his armed forces physical examination or when such a registrant has failed to report for or to submit

to armed forces physical examination, he shall, within ten days after notice of acceptability is mailed to him by the local board or within ten days after he has failed to report for or submit to armed forces physical examination, submit to the local board three types of civilian work contributing to the maintenance of the national health, safety, or interest as defined in section 1660.1, which he is qualified to do and which he offers to perform in lieu of induction into the armed forces. If the local board deems any one of these types of work to be appropriate, it will order the registrant to perform such work, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work.

"(b) If the registrant fails to submit to the local board types of work which he offers to perform, or if the local board finds that none of the types of work submittd by the registrant is appropriate, the local board shall submit to the registrant by letter three types of civilian work contributing to the maintenance of the national health, safety, or interest as defined in section 1660.1 which it deems appropriate for the registrant to perform in lieu of induction. The registrant, within ten days after such letter is mailed to him by the local board, shall file with the board a statement that he either offers to perform one of the types of work submitted by the board, or that he does not offer to perform any of such types of work. If the registrant offers to perform any one of the three types of work, he shall be ordered by the local board to perform such work in lieu of induction, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work.

"(c) If the local board and the registrant are unable to agree upon a type of civilian work which should be performed by the registrant in lieu of induction, the State

Director of Selective Service for the State in which the local board is located, or the representative of such State Director, appointed by him for the purpose, shall meet with the local board and the registrant and offer his assistance in reaching an agreement. The local board shall mail to the registrant a notice of the time and place of this meeting at least 10 days before the date of the meeting. If agreement is reached at this meeting, the registrant shall be ordered by the local board to perform work in lieu of induction in accordance with such agreement, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work.

"(d) If, after the meeting referred to in paragraph (c) of this section, the local board and the registrant are still unable to agree upon a type of civilian work which should be performed by the registrant in lieu of induction, the local board, with the approval of the Director of Selective Service, shall order the registrant to report for civilian work contributing to the maintenance of the national health, safety, or interest as defined in section 1660.1 which it deems appropriate, but such order shall not be issued prior to the time that the registrant would have been ordered to report for induction if he had not been classified in Class I-O, unless he has volunteered for such work."

*Section 1660.21 (c) of the Regulations*

Section 1660.21 (c) of the Selective Service Regulations (32 C. F. R. § 1660.21 (c)) (E. O. 10328, 17 F. R. 1650, Feb. 22, 1952) provides:

"1660.21 *General provisions relating to orders by the local board to perform civilian work and performance of civilian work.*

• • • • •

"(c) Whenever at any time before the registrant has performed for a period of twenty-four consecutive months the work to which he has been ordered by the local board such work ceases to be available for performance by the registrant for any reason not due to the fault of the registrant such as, but not limited to, the cessation of the work or the termination of his employment by his employer, the registrant shall be ordered to perform the same type of work with another employer. If the registrant complies with this order, such transfer of employment shall not constitute a break in his required period of twenty-four consecutive months of performance of work."

*Section 1660.30 of the Regulations*

Section 1660.30 of the Selective Service Regulations (32 C. F. R. § 1660.30) (E. O. 10328, 17 F. R. 1650, Feb. 22, 1952) provides as follows:

*"Failure or neglect to obey order to perform civilian work.* Any registrant who knowingly fails or neglects to obey an order from his local board to perform civilian work contributing to the maintenance of the national health, safety, or interest in lieu of induction shall be deemed to have knowingly failed or neglected to perform a duty required of him under title I of the Universal Military Training and Service Act, as amended. When any registrant fails or neglects to obey any such order, his Cover Sheet (SSS Form No. 101) and contents shall be forwarded to the Director of Selective Service for a determination as to whether or not the registrant shall be reported to the Department of Justice for prosecution."

*Section 1660.31 of the Regulations*

Section 1660.31 of the Selective Service Regulations (32 C. F. R. § 1660.31) (E. O. 10328, 17 F. R. 1650, Feb. 22, 1952, except as otherwise noted) provides as follows:

"*Administration of registrants while performing civilian work.* (a) After a registrant who has been classified in Class I-O reports in response to an order from his local board for civilian work in lieu of induction and he has been classified in Class I-W, his Cover Sheet (SSS Form No. 101) and contents shall be forwarded to the State Director of Selective Service for the State in which the work is being performed. It shall be the responsibility of such State Director of Selective Service to see that the registrant performs the work to which he has been ordered by the local board for a period of twenty-four consecutive months, unless sooner released under the provision of section 1660.21. When the registrant has satisfactorily completed this work, the State Director of Selective Service shall return the registrant's cover sheet to the local board together with a letter stating that the registrant has satisfactorily completed his work. If the registrant should fail to perform such work, or should otherwise fail to perform his duties under title I of the Universal Military Training and Service Act, as amended, during the time that his cover sheet is in the custody of the State Director of Selective Service, the State Director of Selective Service shall forward the cover sheet to the Director of Selective Service for a determination as to whether or not the registrant shall be reported to the Department of Justice for prosecution.

"(b) When the civilian work to which a registrant is ordered by the local board in lieu of induction is to be performed at any place outside of the continental limits of the United States, the Territories of Alaska and Hawaii, Puerto Rico, the Virgin Islands, Guam, and the Canal Zone, and the registrant has reported for such work, the local board, after classifying the registrant in Class I-W, shall forward the registrant's Cover Sheet (SSS Form No. 101) and contents to the Director of Selective Service. It shall be the responsibility of the Director of Selective Service to see that the registrant performs the work to which

he has been ordered by the local board for a period of twenty-four consecutive months, unless sooner released under the provisions of § 1660.21. When the registrant has satisfactorily completed this work, the Director of Selective Service shall return the registrant's cover sheet to the local board together with a letter stating that the registrant has satisfactorily completed his work. If the registrant should fail to perform such work, or should otherwise fail to perform his duties under title I of the Universal Military Training and Service Act, as amended, during the time that his cover sheet is in the custody of the Director of Selective Service, the Director of Selective Service shall determine whether or not the registrant shall be reported to the Department of Justice for prosecution.

"(c) When the local board receives the cover sheet of the registrant from the Director of Selective Service or the State Director of Selective Service together with the letter stating that the registrant has satisfactorily completed his period of civilian work or a written notification that the registrant has been sooner released from such work by the Director of Selective Service under the provisions of § 1660.21, the local board shall mail the registrant a certificate evidencing his satisfactory completion of and release from civilian work and shall retain him in Class I-W and identify him on all records by following his classification with the abbreviation 'Rel.' until such time as he attains an age beyond the maximum age of liability for military service."

[Paragraph (c) amended by E. O. 10420, 17 F. R. 11593, Dec. 19, 1952]

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## Statement Under Rule 15, Subdivision (b)

This is an appeal from a judgment of the United States District Court for the Southern District of New York sentencing the appellant to eighteen months' confinement in an institution to be designated by the Attorney General and imposing a fine of $1,000.00. The judgment is based upon the court's finding the appellant guilty of violating the Universal Military Training and Service Act of 1951.

By indictment returned and filed in the district court on November 7, 1955, appellant was charged with having violated Section 462, Title 50, United States Code (Appendix). In the indictment it was alleged among other things that appellant unlawfully and knowingly failed and neglected to perform and carry out one of the duties required of him under said act and the rules and regulations promulgated thereunder, in that he refused to report for civilian work contributing to the maintenance of the national health, safety and interest in lieu of induction, contrary to the form of the statute in such case made and provided.

Appellant, having been arrested, was duly arraigned before the United States District Court and admitted to bail on May 31, 1956. On such arraignment the appellant pleaded not guilty.

The cause proceeded to trial before Honorable Gregory F. Noonan without a jury, in the United States District Court for the Southern District of New York, July 3, 1956. The Government's evidence was heard, at the conclusion of which decision was reserved. Then on September 11, 1956, appellant's motion for judgment of acquittal was denied. He was found guilty. On October 5, 1956, appellant